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fore liable for his acts (other conditions of liability existing) when he struck plaintiff. *Barmore v. Vicksburg, S. & P. Ry. Co.* (1905), — Miss. —, 38 So. Rep. 210.

The principle is well settled that the master is not liable for the negligent act of the servant done outside the apparent scope of the master's business, and the servant's employment. BISHOP, NON-CONTRACT LAW, § 612; MECHEM, AGENCY, §§ 737, et seq; SMITH, MASTER AND SERVANT, p. 339. But however apparently simple and easy of comprehension the rule may be, it is sometimes found difficult of application; though the difficulty in each particular case arises not from any uncertainty in the rule itself but in ascertaining whether the act complained of was done in the execution of the master's business, and within the scope of the agent's employment. Various tests have been suggested for the purpose of solving this troublesome question, but in each one this inquiry is predominant, Was the agent engaged at the time in serving the principal? *Lima Ry. Co. v. Little*, 67 O. S. 91; *Holler v. Ross*, 68 N. J. L. 324. If the servant was at the time when the injury was inflicted, acting for himself and as his own master, pro tempore, the master is not liable. If the servant steps aside from his master's business for however short a time to do an act not connected with such business the relation of master and servant is for the time suspended. *Morier v. Ry. Co.*, 31 Minn. 351; *Krzykowsky v. Sperring*, 107 Ill. App. 493; *Stephenson v. Southern Pacific Co.*, 93 Cal. 558; *Cobb v. Simon*, 119 Wis., 597. In the recent case of *Loomis v. Hollister*, 75 Conn. 718, the court said: "When the servant takes his master's team in pursuance of his employment and, abandoning the purpose for which he started, goes off on some business of his own, he may thus take his master's team into his own possession without authority, for the transaction of his own business, and in such case his acts are not in the execution of his master's business and his master is not liable for his negligence." The leading cases on this subject are cited and commented upon in both the majority and dissenting opinions in the principal case, but the conclusions arrived at are in conflict. We believe the conclusion of the majority cannot be sustained in law, and that the error into which the court has fallen, is in confusing deviation from the master's service with a total departure therefrom. In the language of the dissenting chief justice, "The principle here stated (is) fraught with great danger. With all deference, I greatly fear that this decision will certainly return to plague the court."

MUNICIPAL CORPORATIONS—EFFECT OF RECITAL IN BONDS.—The city of West Plains issued bonds for the purpose of constructing an electric light and waterworks plant. In a suit brought by a taxpayer against the collector of revenue to set aside a levy made for the purpose of paying the interest on such bonds on the ground that such levy was not authorized by the Constitution or statute, the effect of the following recital in the bonds was brought in question: "And it is hereby certified and recited that all acts, conditions, and things required by the Constitution and laws of the State of Missouri to be done precedent to and in the issuance of this bond have been properly done, happened and been performed in regular and due form and time, as required by law; and that the total indebtedness of said city of West

Plains, including this bond, does not exceed the constitutional or statutory limitation." *Held*, that, narrations in municipal bonds attesting their own validity, or reciting their issuance in compliance with conditions precedent created by law, estop no one and bar no road to the investigation of their legality. *Evans et al. v. McFarland* (1905), — Mo. —, 85 S. W. Rep. 873.

This decision follows previous rulings of the courts of the same state which say that such recitals are neither *prima facie*, nor conclusive, evidence of the required authority to issue the bonds and that they do not dispense with the necessity of proving what they recite when an action is brought on the bond. The steps required to be taken, or acts done, in order to confer authority must be shown to have been taken by evidence outside the mere recital on the face of the bonds and if a record is required by law to be kept such record is the best evidence of the facts and primarily none other is admissible. *Thornburg v. School District*, 175 Mo. 12; *Heard v. School District*, 45 Mo. App. 660. This view is not without support in other states. *Cagwin v. Town of Hancock*, 84 N. Y. 532; *Lippincott v. Town of Pana*, 92 Ill. 24; *Veeder v. Town of Lima*, 19 Wis. 298. The federal courts uniformly hold that where a city has power, under the Constitution and laws, to issue certain bonds and such bonds are issued containing recitals representing that everything required by law to be done has been done, before issuing the bonds, purchasers have the right to assume that such recitals are true. *Hackett v. Ottawa*, 99 U. S. 86; *Ottawa v. National Bank*, 105 U. S. 342; *Evansville v. Dennett*, 161 U. S. 434; *Waite v. Santa Cruz*, 184 U. S. 302; *City of Huron v. Savings Bank*, 86 Fed. 272; *Clapp v. Village of Marice City*, 111 Fed. 103; *Board of Com'rs. v. Vandriss*, 115 Fed. 866. And a majority of the state courts have followed the rule established by the Supreme Court of the United States. *Thompson v. Village of Mecosta*, 127 Mich. 522; *South Hutchinson v. Barnum*, 63 Kan. 872; *Fulton v. Town of Riverton*, 42 Minn. 395; *Supervisors v. Brown*, 67 Miss. 684; *Kerr v. City of Cory*, 105 Pa. St. 282; *State v. Commissioners*, 37 Ohio St. 526.

MUNICIPAL CORPORATIONS—LIABILITY FOR NEGLIGENCE OF INDEPENDENT CONTRACTOR.—The City of New Orleans, through a board of commissioners, contracted for the furnishing and planting of a large number of trees upon neutral ground in St. Charles Avenue. This ground was not ordinarily used by pedestrians and on ordinary occasions there was no necessity for such use. The city retained no control over the manner of planting the trees except to designate the places at which they were to be planted. The contractor, in pursuance of his contract, dug a hole several feet deep and permitted it to remain open, without covering or light to indicate the danger, on the night of Mardi Gras. On that night, a large crowd collected in the avenue to view the parade and because of such crowd and the surrounding darkness the plaintiff was unable to see the hole into which she fell. This action was brought against the contractor and the city to recover damages for injuries sustained by her from such fall. *Held*, that the city, having let the work to an independent contractor and the work not being of a kind necessarily dangerous for purposes of public travel, was not liable. *La Groue et ux. v. City of New Orleans* (1905), — La. —, 38 So. Rep. 160.